

ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

ROBERT W. ALVORD
ALBERT H. GREENE
CARL C. DAVIS*
CHARLES T. KAPPLER
JOHN H. DOYLE
MILTON C. GRACE*
GEORGE JOHN KETO**
RICHARD N. BAGENSTOS

* NOT A MEMBER OF D.C. BAR
** ALSO A MEMBER OF OHIO BAR

LAW OFFICES
ALVORD AND ALVORD

200 WORLD CENTER BUILDING

918 SIXTEENTH STREET, N.W.

WASHINGTON, D. C.

20006

RECORDATION NO. 13207 Filed 1475

OF COUNSEL
JESS LARSON
JOHN L. INGOLDSBY
URBAN A. LESTER

CABLE ADDRESS
"ALVORD"

TELEPHONE
AREA CODE 202
393-2266

July 31, 1981 3 22 PM

INTERSTATE COMMERCE COMMISSION

TELEX
1-313A132

Ms. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
Washington, D.C.

Dear Madam:

Enclosed for recordation under the provisions of 49 U.S.C. §11303 and the regulations thereunder are original and two counterparts of an Equipment Lease dated as of July 1, 1981.

A general description of the railroad equipment covered by the enclosed document is as follows:

Sixty (60) 100-ton, 4750 cubic foot covered hopper cars bearing reporting marks TC 794 through TC 853, both inclusive.

The names and addresses of the parties to the document are as follows:

Lessor: First Commercial Bank
550 J Street
Sacramento, California 95083

Lessee: United States Rail Services, Inc.
633 Battery Street
San Francisco, California 94111

The undersigned is authorized agent for the Lessee for the purpose of submitting the enclosed document for recordation.

RECEIVED
JUL 31 12 11 PM '81
FEDERAL RECORDATION SERVICE

C. T. Kappler
C. T. Kappler

Ms. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
July 31, 1981
Page Two

Please return the original and one counterpart of
the document to the undersigned or to the bearer hereof.

Also attached is a remittance in the amount of
\$50.00 covering the required recordation fee.

Very truly yours,

ALVORD AND ALVORD

By: Charles T. Kappler

Charles T. Kappler

CTK/lac
Enclosures

EQUIPMENT LEASE

JUL 31 1981 - 2 20 PM

INTERSTATE COMMERCE COMMISSION

THIS EQUIPMENT LEASE, dated as of July 1, 1981 (the Lease), is between FIRST COMMERCIAL BANK (the Lessor) and UNITED STATES RAIL SERVICES, INC. (the Lessee).

W I T N E S S E T H :

SECTION 1. Definitions, Construction of References

In this Lease, unless the context otherwise requires:

(a) All references in this instrument to designated Sections and other subdivisions are to designated Sections and their subdivisions of this Lease, and the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Section or other subdivision;

(b) The terms defined in this Section 1 or elsewhere in this Lease shall have the meanings assigned to them in this Section 1 or elsewhere and include the plural as well as the singular;

(c) Except as otherwise indicated, all the agreements or instruments hereinafter defined shall mean such agreements

or instruments as the same may from time to time be supplemented or amended or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms thereof;

(d) The following terms shall have the following meanings for all purposes of this Lease;

(1) Appraisal shall mean a determination of the amount in question in accordance with the provisions hereof by a qualified independent appraiser selected by mutual agreement of the Lessor and the Lessee or failing such agreement, by a panel of three qualified independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third by the first two selected. If no appraiser can be agreed upon by the first two appraisers, such appraiser shall be selected in accordance with the rules for commercial arbitration of the American Arbitration Association. The appraisers shall be instructed to make such determination within a period of 20 days following appointment, and shall promptly communicate their determinations in writing to the Lessor and the Lessee. The determination so made by the sole appraiser or by a majority of the appraisers, as the case may be, shall be final and binding on both the Lessor and the Lessee. If each appraiser makes a different determination, the deter-

mination that differs most from the other two shall be excluded, the remaining two appraisals shall be averaged, and such average shall be final and binding on both the Lessor and the Lessee. The fees and expenses of such appraisal shall be paid by the Lessee; provided, however, that if a panel of appraisers makes such determination, such fees and expenses shall be borne equally by the Lessor and the Lessee.

(2) Basic Rent, Basic Rent Dates, Rent, and Supplemental Rent, shall have the meanings set forth in Section 3 hereof.

(3) Casualty Value shall have the meaning with respect to each Item of Equipment as set forth in Exhibit A.

(4) Closing Date shall mean July 31, 1981.

(5) Expiration Date shall mean the eighteenth anniversary of the Closing Date.

(6) Termination Value shall have the meaning with respect to each Item of Equipment as set forth in Exhibit B.

(7) Business Day, Code, Guarantor, Lender, Notes, Owner's Cost, Purchase Agreement, Purchase Contracts,

Purchase Documents and Security Agreement, shall have the meanings set forth in the Participation Agreement.

(8) Equipment and Item of Equipment shall have the meanings set forth in Section 2 hereof.

(9) Fair Market Rental Value and Fair Market Value of an Item of Equipment, respectively, shall be determined on the basis of, and shall mean the amount of rental for the term of lease in question and in the case of determining the Fair Market Value, the purchase price, which would be obtainable in an arm's-length transaction between an informed and willing user or lessee or purchaser (other than a used equipment dealer) and an informed and willing lessor or seller neither of whom are under any compulsion to lease, or sell, and in such determination costs of removal from the location of current use shall not be a deduction from such amount and all alternative uses in the hands of such user, lessee or purchaser including, without limitation, the further leasing of such Item of Equipment, shall be taken into account in making such determination. If the Lessor and the Lessee are unable to agree upon a determination of Fair Market Rental Value or Fair Market Value with respect to a particular Item of Equipment, such Fair Market Rental Value or Fair Market Value shall be determined in accordance with the procedure for Appraisal.

(10) Overdue Rate shall mean 16% per annum, simple interest.

(11) Participation Agreement shall mean the Participation Agreement, dated as of the date hereof, among the Lessee, the Lessor, the Guarantor and the Lender.

SECTION 2. Lease of Equipment

Effective on and as of the Closing Date, the Lessor hereby leases to the Lessee, and the Lessee hereby leases from the Lessor, upon the terms and conditions hereinafter set forth the following described items of railroad rolling stock (individually, an Item of Equipment and collectively, the Equipment):

Sixty (60), 100-ton, 4750 cubic foot covered hopper cars, Thrall Job No. 790-D, manufactured by Thrall Car Manufacturing Company to be delivered from storage facilities on the EJ&E Railroad in Griffith, Indiana and bearing reporting marks and nos. TC 794 to TC 853, both inclusive.

The Lessee hereby unconditionally accepts the Equipment for lease under this Lease and in so doing, represents, warrants and agrees on and as of the Closing Date that each Item has been

found to be in good order and condition and meets the specifications in the Purchase Contracts therefor.

SECTION 3. Term and Rent

(a) Term. The term of this Lease as to each Item of Equipment shall begin on the Closing Date, and shall end on the Expiration Date, unless this Lease shall have been earlier terminated, or the term of this Lease with respect to such Item of Equipment shall have been extended, by the terms hereof.

(b) Basic Rent. The Lessee shall pay to the Lessor as Basic Rent for each Item of Equipment subject to this Lease, (i) twenty-three (23) consecutive semi-annual installments, each of which shall be in an amount equal to 5.6229% of the Owner's Cost thereof followed by, (ii) one (1) installment in an amount equal to 41.4908% of the Owner's Cost thereof followed by, (iii) twelve (12) consecutive semi-annual installments, each in an amount equal to 2.26294% of the Owner's Cost thereof. The Basic Rent payable under this Lease and the Casualty and Termination Values are subject to adjustment pursuant to Section 12 of the Participation Agreement, Subsection (f) of this Section and Section 15 provided, however, that in no event shall Basic Rent be less than the principal and interest due on the Notes on each Basic Rent Date (as defined in Subsection (c) of this Section) and in no event shall the Casualty or Termination Values be less than the amount required to pay the principal of and accrued and unpaid interest, and all other amounts due and payable on the Notes by reason of an Event of Loss or an early termination of this Lease.

(c) Payment Dates. The installments of Basic Rent for each Item of Equipment shall be due and payable on the 31st day of each January and July during the term hereof commencing January 31, 1982 and with a final payment due on July 31, 1999 (Basic Rent Dates). If any of the Basic Rent Dates is not a Business Day, the rent payment otherwise payable on such date shall be payable on the next succeeding Business Day.

(d) Other Payments. The Lessee shall pay to the Lessor the following amounts (herein referred to as Supplemental Rent and, together with all Basic Rent, as Rent):

(1) on demand, any amount payable hereunder (other than Basic Rent, Termination Value and Casualty Value) which the Lessee assumes the obligation to pay, or agrees to pay, under this Lease to the Lessor or others;

(2) on the dates provided herein, any amount payable hereunder as Termination Value and Casualty Value;

(3) to the extent permitted by applicable law, interest (computed on the basis of a 360-day year of twelve 30-day months) at the Overdue Rate on any payment of Basic Rent, Termination Value or Casualty Value, not paid when due for any period after which the same shall be overdue and on any payment of Supplemental Rent (excluding Termination Value and Casualty Value) not paid when demanded hereunder for the period from the date of such demand until the date on which the same shall be paid;

(4) all amounts as and when due under the Participation Agreement.

(e) Manner of Payment. All payments of Rent hereunder shall be made so that the Lessor or any assignee of the Lessor, shall have immediately available funds on the date payable hereunder, and shall be paid to the Lessor at its address set forth herein or at such other address as the Lessor may direct by notice in writing to the Lessee.

(f) Adjustment of Rent. The Basic Rent payable under this Lease and the Casualty and Termination Values shall be adjusted as follows:

(i) In the event the expenses paid by the Lessor pursuant to Section 13(b) of the Participation Agreement shall exceed \$40,000, the Basic Rent payable under this Lease and the Casualty and Termination Values shall be adjusted so as to maintain the Lessor's net return at the same level (giving effect to an increase of such net return, if any, pursuant to Subsection 3(f)(ii) of this Section), which the Lessor would have received if such expenses were \$40,000. The Lessor's net return means both the Lessor's book earnings and its nominal before-tax rate of return determined, (A) using various assumptions with respect to such matters as the Tax Assumptions, income tax rates, debt rates, sinking fund rates, depreciation, investment tax credits, expense amounts and amortization, residual values and delivery dates, as were utilized by the Lessor in originally evaluating this transaction as changed or re-evaluated in connection with any adjustments made pursuant to said Subsection 3(f)(ii) including the assumption the Lessor would pay \$40,000 pursuant to

Section 13(b) of the Participation Agreement and the tax treatment thereof and (B) taking into consideration the effect of any payments made by the Lessee pursuant to Section 15 of the Lease and by the Lessor of expenses in excess of \$40,000 pursuant to Section 13(b) of the Participation Agreement, as the only changed circumstances.

(ii) In the event of one or more Changes in Tax Law (as defined below) that become effective on or before December 31, 1981, the effect of which, taken together, would be to decrease the book earnings or nominal before-tax rate of return originally anticipated by the Lessor to be realized by it from this lease transaction, the Lessor may notify the Lessee thereof and provide the Lessee with a schedule of Basic Rent payments and Casualty and Termination Values to apply to all future payments, all revised in a manner that will preserve such originally anticipated book earnings and nominal before-tax rate of returns. In the event of one or more Changes in Tax Law that become effective on or before December 31, 1981, the effect of which, taken together, would be to increase such originally anticipated book earnings or nominal before-tax rate of return, or both the Lessor shall notify the Lessee thereof and provide the Lessee with a schedule of Basic Rent payments and Casualty and Termination Values to apply to all future payments, all revised in a manner that will, subject to the proviso in Section 3(b) of this Lease, provide the Lessor with a Return (as defined below) that shall be equal to the average of (x) the Return

originally anticipated by the Lessor to be realized by it from this lease transaction and (y) the Return that the Lessor then anticipates realizing from this lease transaction. Return means nominal before-tax rate of return and book earnings.

If the Lessee shall question the reasonableness of the revised amounts appearing on such schedule, and if the Lessor and the Lessee are thereafter unable to agree on the revised amounts, the matter shall be referred by the Lessor to independent accountants selected by the Lessor and approved by the Lessee (which approval shall not be unreasonably withheld) who shall determine the revised amounts in accordance with this Section and such determination shall be final and binding on both the Lessor and the Lessee. The revised Basic Rent payments and Casualty and Termination Values so agreed or determined shall be substituted for the corresponding amounts set for in this Lease and such substituted amounts shall thereafter be applicable to all Items of Equipment.

Change in Tax Law means any of the following events:

(1) An amendment of the Code, (2) the issuance by the Internal Revenue Service of a final regulation or a proposed regulation that is generally being complied with by equipment lessors, or (3) a final decision of a court affecting federal tax laws. If a proposed regulation is not ultimately issued as a final regulation in substantially the same form and subject to the proviso contained in Section 3(b) of this Lease, appropriate adjustments will be made in the Basic Rent payments and Casualty and Termina-

tion Values. A final decision of a court shall not be deemed to have occurred on or before December 31, 1981 unless such decision was issued by the court on or before that date and subsequently affirmed on any appeal. The Lessor's book earnings and nominal before-tax rate of return shall be determined using various assumptions with respect to such matters as the Tax Assumptions, income tax rates, debt rates, sinking fund rates, depreciation, investment tax credits, expense amounts and amortization, residual values and delivery dates, as were utilized by the Lessor in originally evaluating this transaction and taking into consideration the effect of any payments made by the Lessee pursuant to Section 15 of the Lease, any moneys received by or additional investment the Lessor may have made in this transaction in connection with the Change in Tax Law, and the Change in Tax Law, as the only changed circumstances.

In connection with the Change in Tax Law the Lessor agrees that for purposes of these adjustments the Lessor will make the most advantageous elections that are available to it under the Code as amended by the Change in Tax Law provided that any such election would be applicable only to this transaction and not to any other transaction of Lessor or the affiliated group of which it is a member. In order to maximize the benefits to the Lessor and the Lessee that the parties contemplate will be shared following a favorable Change in Tax Law and cause the Lessee's share of such benefits to be reflected in lower Basic Rent, Casualty and Termination Values, the parties contemplate that the Lessee will request the Lessor to prepay the Notes to

the extent of between three and four percent (3-4%) of the Owner's Cost. The Lessor agrees to consider such a request in good faith and it is the Lessor's intention on the date hereof to accede to such request. The Lessor may, however, for good reason refuse such request but shall in such case agree to share the benefits to be derived from the favorable Change in Tax Law by other appropriate means, which may include an adjustment to Basic Rent at the time of any refinancing pursuant to Section 12 of the Participation Agreement. Any such other or later adjustment shall take into account the fact of the Lessor's retention for the period prior to such adjustment of a portion of such tax benefits which would otherwise have been shared with the Lessee. In no event shall any adjustment under this paragraph require the Lessor to increase its investment by more than 10% of the Owner's Cost or be made to the extent that in the Lessor's opinion, such adjustment will jeopardize the tax consequences of the transaction. Notwithstanding the division of benefits implied in the adjustment formula above, the Casualty and Termination Values will be decreased by the amount of any depreciation or investment tax credit recapture (and taxes thereon) reflected in such values to the extent that, as the result of the Change in Tax Law, no such recapture by the Lessor will be required. All calculations under this Section will be made disregarding the consequences to any transferee of the Lessor pursuant to the Participation Agreement and solely on the basis of the economics to the Lessor as if no transfer or assignment had been made.

The adjustment that is contemplated to be made by reason of a change in tax law presently pending in the Congress of the United States shall be made promptly following the enactment of any bill (the Bill) implementing those proposals. If any subsequent Change in Tax Law occurs that adversely affects the Lessor's book earnings and nominal before-tax rate of return, an additional adjustment will be made pursuant to this Section to preserve the Lessor's book earnings and nominal before-tax rate of return at the level anticipated to be realized by the Lessor after the adjustment made by reason of the Bill, and the Lessee shall compensate the Lessor for its cost of making such subsequent adjustment.

SECTION 4. Net Lease, Assignment by Lessor

(a) Net Lease. This Lease is a net lease and the Lessee acknowledges and agrees that the Lessee's obligations to pay all Rent hereunder, and the rights of the Lessor and its assignee in and to such Rent, shall be absolute and unconditional and shall not be subject to any abatement, reduction, set-off, defense, counterclaim or recoupment (Abatement) for any reason whatsoever, including, without limitation, any Abatement due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise, or against the manufacturer or seller of any Item of Equipment. Except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the respective rights and obligations of the Lessor or the Lessee be affected, by reason of any defect in or damage to, or any loss or

destruction of, the Equipment or any Item thereof from whatsoever cause, or the interference with the use thereof by any private person, corporation or governmental authority, or the invalidity or unenforceability or lack of due authorization of this Lease or lack of right, power or authority of the Lessor to enter into this Lease, or for any other cause, whether similar or dissimilar to the foregoing, any present or future law or regulation to the contrary notwithstanding, it being the express intention of the Lessor and the Lessee that all Rent payable by the Lessee hereunder shall be, and continue to be, payable in all events unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

(b) Assignment by Lessor. The Lessor shall have the right to mortgage the Equipment or assign pursuant to the Security Agreement or other separate form of assignment, all or any part of its rights, subject to Section 12 of the Participation Agreement and the rights and leasehold interest of the Lessee under this Lease. In such event, each assignee shall be entitled to enforce the rights so assigned, but shall be under no liability to the Lessee to perform any of the obligations of the Lessor. The Lessee agrees that it will pay all sums so assigned and due by the Lessee hereunder directly to such assignee (or to whomsoever the assignee shall direct) after receipt of notice of such assignment. Any assignee of Lessor's rights may reassign such rights with the same force and effect as, but to no greater extent than, an original assignment.

SECTION 5. Return of Equipment

Upon final termination of the lease term hereunder of any Items of Equipment, the Lessee shall forthwith deliver possession of the Items to the Lessor (or to a purchaser of such Items pursuant to Section 11 hereof) in the same condition as when received, ordinary wear and tear excepted and in good order, repair and operating condition. Such Items shall then meet the standards then in effect under the applicable rules of any governmental agency or other organization with jurisdiction over such Items and the applicable standards then in effect for such Items under the interchange rules of the Association of American Railroads and be in at least the same condition as other railroad rolling stock owned or leased by the Lessee, which is of comparable age and type and does not carry cargo which is corrosive or more abrasive than phosphates, detergents, soda ash or clay. For the purposes of delivering possession of any Items of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(i) Forthwith place such Items upon such storage tracks or at such storage facilities as the Lessor and the Lessee may agree, or in the absence of such agreement, at the Lessor's option, either (A) in an aggregate number of Items at the storage tracks or facilities in the immediate vicinity of the same city where Items were originally accepted hereunder as set forth in Section 2 ~~provided that all Items of Type C Equipment remaining under this Lease shall be returned~~ to the same location, or (B) upon such storage tracks or at

such storage facilities at such other or additional locations as the Lessor may designate for the return of Items of Equipment; provided, however, that if the Lessor designates any other or additional locations, the Lessor shall pay all mileage charges on rail mileage for all Items being returned to such designated location in excess of an aggregate allowance equal to 250 rail miles per Item between the location of such Item within the continental United States upon final termination of the lease term hereunder and the location so designated by the Lessor for such return;

(ii) Arrange for the Lessor to store such items on such tracks or storage facilities at the sole cost, expense and risk of the Lessee during the first ninety (90) days of any storage period or until such Items have been sold, leased or otherwise disposed of by the Lessor, whichever first occurs, provided that the Lessee will use its best efforts to arrange for storage at such locations or for other suitable storage elsewhere, at the sole cost, expense and risk of the Lessor for a longer period, as to any Items not sold, leased or otherwise disposed of by the Lessor within such initial ninety (90) day period.

Except as above provided, the removal, assembling, delivery, storage and transporting of the Items as hereinabove provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application by the Lessor to any court of equity having jurisdiction in the premises the Lessee shall not raise any defense to that court's entering a

decree against the Lessee requiring specific performance of the covenants of the Lessee so to remove, assemble, deliver, store and transport the Items. During the first ninety (90) days of any storage period, the Lessee shall maintain insurance on the Items of Equipment in accordance with Section 12 hereof and shall upon notice permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessor of any such Item, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence or misconduct of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser or lessor, the rights of inspection granted under this sentence.

Any such Item shall be returned in the condition in which such Item is required to be maintained pursuant to Section 9 hereof. Each Item, upon redelivery pursuant hereto, shall be free and clear of all mortgages, liens, security interests, charges, encumbrances and claims (Liens), other than Liens resulting from voluntary action by the Lessor without the prior approval of the Lessee and Liens described in Section 7(g) of the Participation Agreement (such Liens being herein referred to as Lessor's Liens).

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 5, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney-in-fact of the Lessee, with full power and authority, at

any time while the Lessee is obligated to deliver possession of any Item to the Lessor, to demand and take possession of such Item in the name and on behalf of the Lessee from whomsoever shall be in possession of such Item at the time.

SECTION 6. . Covenant of Quiet Enjoyment; Disclaimer
of Lessor's Warranties

The Lessor covenants that during the term of this Lease, so long as no Event of Default has occurred and is continuing, neither the Lessor or anyone claiming by, through or under the Lessor directly or indirectly, shall have a legal right to interfere with the Lessee's quiet use and enjoyment of the Equipment pursuant to this Lease.

THE LESSOR LEASES THE EQUIPMENT AS-IS AND HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE TITLE, DESIGN OR CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE EQUIPMENT OR CONFORMITY OF THE EQUIPMENT TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE ORDER OR ORDERS RELATING THERETO, NOR SHALL THE LESSOR BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT), but the Lessor authorizes the Lessee, at the Lessee's expense, to assert for the Lessor's account, during the term of this Lease, so long as no Event of Default shall have occurred hereunder and be continuing, all of the Lessor's rights under any applicable manufacturer's or seller's warranty, patent

and other agreements and the Lessor agrees to cooperate with the Lessee in asserting such rights; provided, however, that the Lessee shall indemnify and shall hold the Lessor harmless from and against any and all claims, and all costs, expenses, damages, losses and liabilities incurred or suffered by the Lessor in connection with, as a result of, or incidental to, any action by the Lessee pursuant to the above authorization. Any amount received as payment under any such warranty, patent or other agreements shall be payable to the Lessor and, if no Event of Default has occurred and is continuing hereunder, such amount shall be applied (i) if the breach of agreement resulted in defects or deficiencies in the Equipment, to restore or as reimbursement to the Lessee for the restoration of the Equipment to the condition required by Section 9 hereof and if any excess funds are available after application as set forth in (i), then (ii) if such breach resulted in other loss, including loss of income to the Lessee or any expense or liability, to pay any such loss, expense or liability or as reimbursement to the Lessee for any payments of that nature made or losses incurred by the Lessee, and (iii) the balance to the Lessor.

SECTION 7. Liens

The Lessee will not mortgage, encumber or directly or indirectly create, incur, assume or suffer to exist any Liens on or with respect to the Equipment, title thereto or any interest therein (and the Lessee will promptly, at its own expense, take such action as may be necessary to duly discharge any such Lien),

except (a) the respective rights of the Lessor and the Lessee under this Lease and the Participation Agreement and under subleases made by the Lessee, as herein provided, (b) Lessor's Liens, (c) Liens for taxes either not yet due or being contested in good faith and by appropriate proceedings, but the Lessee will promptly, at its own expense, discharge any such Lien being contested if, in the Lessor's reasonable opinion, the continued existence of such Lien adversely affects the title, property, or rights of the Lessor or the security interest of the Lender under the Security Agreement, and (d) inchoate materialmen's, mechanics', workmen's, repairmen's, employees' or other like Liens arising in the ordinary course of business of the Lessee and not delinquent, and (e) Liens granted by the Lessor to any assignee or security assignee of the Lessor including the Lender.

SECTION 8. Taxes

(a) Except as provided in part (b) of this Section, the Lessee agrees to pay when due and to indemnify the Lessor for, and hold the Lessor harmless from and against, all income, franchise, sales, use, personal property, ad valorem, value added, leasing, leasing use, stamp or other taxes, levies, imposts, duties, charges, or withholdings of any nature, licensing or registration fees, together with any penalties, fines or interest thereon or reasonable attorneys' fees incurred by the Lessor with respect thereto (Impositions), arising out of the transactions contemplated by this Lease and imposed against the Lessor, the Lessee or the Equipment by any federal, state, local or foreign

government or taxing authority upon or with respect to the Equipment, including the sale, purchase, ownership, delivery, leasing, subleasing, possession, use, operation, return or other disposition thereof, or upon the rentals, receipts or earnings arising therefrom, or upon or with respect to this Lease. Subject to Section 7(c) hereof, the Lessee may contest any Imposition, at its own expense, if it shall have given to the Lessor written notice 30 days prior to the date for payment of any such Imposition, which notice shall state that such Imposition is being contested by the Lessee in good faith and by appropriate proceedings; provided that if independent counsel for the Lessor (who may be the Lessor's regularly retained general counsel) determines at any time (the Lessee hereby agreeing to pay all reasonable fees and expenses of such counsel) that the nonpayment thereof or the contest thereof in such proceedings in the reasonable opinion of such counsel, adversely affects the title, property or rights of the Lessor, or the security interest of the Lender under the Security Agreement, the Lessor may require the Lessee to pay such Imposition. All amounts payable by the Lessee under this Section 8 shall be payable to the extent not theretofore paid, on written demand of the Lessor. If a claim is made against the Lessee or the Lessor for any Imposition, the party receiving notice of such claim shall promptly notify the other but the giving of such notice shall not be a condition to the Lessee's obligations under this Section 8. In case any report or return is required to be made, whether in the name of the Lessor or the Lessee (including, without limitation, all state and local

sales, use and property tax returns) with respect to any obligation of the Lessee under this Section 8 or arising out of this Section 8, the Lessee will either (after notice to the Lessor) make such report or return in such manner as will show the ownership of the Equipment in the Lessor or will notify the Lessor of such requirement and make such report or return in such manner as shall be satisfactory to the Lessor. The Lessor agrees to cooperate fully with the Lessee in (a) the preparation of any such report or return and (b) provided the Lessee shall pay all costs and expenses of the Lessor, any contest contemplated in this Section 8.

(b) The Lessee's obligations under paragraph (a) of this Section 8 shall not apply to:

(1) Impositions on, based on, or measured by, the net income of the Lessor imposed by the United States;

(2) Impositions on, based on, or measured by, the net income of the Lessor (A) imposed by the state or any local government or taxing authority within the state in which the Lessor's principal office is or may be located or (B) imposed by any other state or local government or taxing authority, but only to the extent that payment of such Impositions to such other state or local government or taxing authority reduces Impositions payable by the Lessor to the state or any local government or taxing authority within the state in which Lessor's principal office is or may be located.

(3) Impositions incurred solely by reason of (A) any voluntary transfer or (B) any involuntary transfer resulting

from any exercise by any creditor of the Lessor (other than the Lessee with respect to its rights under this Lease or any person claiming any rights through the Lessee with respect thereto) of such creditor's rights to any interest in the Equipment or any portion thereof or the Lease at a time when such Equipment is leased under the Lease and no Event of Default (or other event which with the lapse of time or the giving of notice or both would constitute an Event of Default) has occurred and is continuing; excluding, however, (C) any transfer pursuant to Section 11 of the Lease unless the Lessee has paid in full the Casualty Value or the Termination Value as required by Section 11 and all other amounts due pursuant to Section 11, (D) any transfer pursuant to Section 18 of the Lease and (E) any transfer pursuant to Section 12(a), (d) or (e) of the Participation Agreement in connection with the New Loan (as defined therein).

(4) Impositions on the excess of any net insurance proceeds, condemnation payments, damages or other amounts over Casualty Value or the excess of any proceeds of sale over Termination Value retained by the Lessor under Section 11 of the Lease;

(5) Impositions incurred solely by reason of any event occurring after the return of the Equipment at or after the end of the term of the Lease, as scheduled, as renewed pursuant to Section 16 of the Lease, or as terminated pursuant to Section 11 of the Lease; and

(6) Impositions to the extent the Lessor's gross negligence or willful misconduct causes or deprives the Lessee of legal rights to avoid or reduce the same.

If the Lessor is indemnified by the Lessee with respect to an Imposition as provided in this Section 8 and as a direct result thereof the tax liability of the Lessor is reduced in the year of payment or any subsequent year, the Lessor shall pay the Lessee the sum of (i) the net amount by which the Lessor's tax liability has been so reduced and (ii) any reduction in the Lessor's tax liability attributable to the deduction of the amount described in this sentence; provided, however, that the total of such payments by the Lessor shall not exceed the total of indemnity payments made by the Lessee in respect of such Imposition and no such amount shall be payable to Lessee at any time when an Event of Default (or any event which with the lapse of time or the giving of notice or both would become an Event of Default) has occurred and is continuing.

No amount shall be payable under paragraph (a) of this Section to the extent any payment of Casualty Value or Termination Value by the Lessee has indemnified the Lessor for any amount otherwise payable pursuant to this Section. If the Lessee makes both an indemnity payment with respect to an Imposition under this Section and also makes either a payment of Casualty Value or a payment of Termination Value, then in such event an appropriate adjustment shall be made, if necessary, to prevent duplication of payment by the Lessee for such Imposition.

(c) The amount of each indemnity payable by the Lessee under this Section shall be an amount which, after taking into account all Impositions imposed with respect to the receipt of such indemnity by the Lessor or any payment by the Lessee for the Lessor's account (as the same may be increased under this sentence) and any deductions or credits attributable to the Impositions for which the indemnity payment has been made, shall be equal to the amount of such indemnity.

SECTION 9. Use, Location, Maintenance and Operation;
 Identifying Marks

(a) The Lessee agrees that the Equipment will be used, and when redelivered upon the expiration or earlier termination of this Lease will be, in compliance with any and all statutes, law, ordinances and regulations of any governmental agency and the interchange rules of the Association of American Railroads or its successor, applicable to the use of the Equipment, and, subject to the provisions of Section 14 hereof, will at all times be used solely in the conduct of its business and be and remain in the possession and control of the Lessee. The Lessee agrees that no Item of Equipment will be used predominantly outside the United States, within the meaning of Section 48(a)(2) of the Code and that the Equipment as a whole will not be used outside the continental United States other than for de minimis use in Canada and Mexico unless the Lessee shall first obtain the Lessor's and Lender's written consent, which shall not unreasonably be withheld. The Lessor or the Lender may condition their consent on

the Lessee's executing and filing at the Lessee's expense any documents necessary to perfect, protect and preserve in the appropriate jurisdictions, in the reasonable opinion of the Lessor and the Lender, (i) the title of the Lessor to, and (ii) the security interest of the Lender in, such Item of Equipment and the Lessee's reporting the extent of such foreign use to the Lessor. Throughout the term of this Lease or any extension thereof, the possession, use and maintenance of the Equipment shall be at the sole risk and expense of the Lessee.

(b) The Lessee shall cause the Items of Equipment to be used only in the manner for which they were designed and intended and will, at its own cost and expense, install or otherwise provide all mechanisms, modifications and improvements required for the Equipment to be in compliance with Section 9(a) hereof and the Lessee will repair and maintain each Item of Equipment so as to keep it in as good condition as when delivered to the Lessee hereunder, ordinary wear and tear excepted, and in good working order. No Item of Equipment shall be used to transport commodities that are hazardous within the meaning of United States Department of Transportation Tariff No. BOE 6000, or, unless the Lessee shall first take all necessary measures to assure protection of the Item from its cargo, commodities that are corrosive or more abrasive than phosphates, detergents, grain, soda ash or clay.

(c) The Lessee will not, without the prior written consent of the Lessor, affix or install any accessory, equipment or device on any Item of Equipment leased hereunder which will

either impair the originally intended function or use or adversely affect the commercial value of any such Item. The Lessee agrees that any nonremovable addition to the Equipment which has been furnished, attached or affixed to any Item shall upon attachment or affixation become the property of the Lessor and thereupon all such accessories, equipment and devices shall become a part of the Equipment leased hereunder and be subject to the lien granted by the Lessor in financing the Owner's Cost of the Equipment. The Lessee agrees that each such Item is, and shall continue to be throughout the term of this Lease, personal property under applicable law and the Lessee agrees to take such action as shall be required from time to time by the Lessor to protect the Lessor's title to each such Item and the right of the Lessor to remove the same.

(d) The Lessee agrees, at its own cost and expense, to:

(1) cause each Item of Equipment to be kept numbered with the marks and numbers specified in Section 2 ~~therefor~~ ^{here of} or with the marks and numbers of any sublessee or user thereof provided the Lessee will not change the marks and numbers of any Item of Equipment except in accordance with a statement of new marks and numbers to be substituted therefor, which statement previously shall have been delivered to the Lessor and the Lender by the Lessee and filed, recorded or deposited in all public offices where this Lease or the Security Agreement shall have been filed, recorded or deposited;

(2) keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than one inch in height as follows:

"Subject to an Ownership and Security

Interest Recorded with the I.C.C."

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Item of Equipment, its rights under this Lease and the rights of any assignee; and

(3) keep and maintain such other markings as from time to time may be required by law or otherwise deemed necessary by the Lessor in order to protect the title of the Lessor to such Item of Equipment, the rights of the Lessor under this Lease and the lien granted by the Lessor in financing the Owner's Cost of the Equipment.

The Lessee will not place any Item of Equipment in operation or exercise any control or dominion over the same until the requirements of this Subsection 9(d) have been met. The Lessee will replace promptly any such markings which may be removed, defaced or destroyed.

SECTION 10. Inspection

The Lessor shall have the right, but not the duty, to inspect the Equipment. Upon the request of the Lessor, the Lessee shall inform the Lessor of the last known location and the user of each Item of Equipment and shall, at any reasonable time,

and as to Items in the possession of the Lessee, make such Items, and the Lessee's records including copies of all subleases pertaining to the Equipment available to the Lessor for inspection at such location. As to any Items subleased or rented by the Lessee to others, the Lessee will, within a reasonable time, make arrangements for the Lessor to inspect such Items and the user's records pertaining to such Items in a manner which does not interfere with the usage of such Items by the Lessee's subleasing or rental customer.

SECTION 11. Loss or Destruction; Requisition of Use;
Optional Termination;

(a) The Lessee agrees that it shall use reasonable diligence to ascertain, promptly report to the Lessor and keep the Lessor currently apprised of all important facts and circumstances concerning the Equipment, including whether any Item of Equipment shall be or become damaged, destroyed, lost, stolen, or permanently rendered unserviceable or unfit for use for any reason whatsoever, or title thereto shall be requisitioned or otherwise taken by any governmental authority under power of eminent domain or otherwise (Requisition of Use), or any Item of Equipment is returned to the manufacturer or seller thereof pursuant to any warranty, repair or indemnity provisions of any Purchase Contracts, or any Item of Equipment has been outside the United States for more than 180 days in any calendar year.

(b) Within thirty (30) days after the Lessee's report that there has been any damage to an Item, the Lessee shall

determine and notify the Lessor whether such Item of Equipment can be repaired within six (6) months from the date of such notice (Repair Period).

(c) In the event that an Item damaged cannot be repaired within the Repair Period or in the event of destruction, loss, theft, unserviceability, unfitness for use, Requisition of Use for a stated period which exceeds the remaining term of this Lease, a Requisition of Use for an unstated period which exists for more than one (1) year or until after the Expiration Date, or return of such Item to the manufacturer or seller thereof without replacement thereof within six (6) months of the date of such return (any of such occurrences being referred to as an Event of Loss), the Lessee shall promptly notify the Lessor of such Event of Loss. On the Basic Rent Date on or prior to the Expiration Date next following the date of such Event of Loss, the Lessee shall pay to the Lessor the Casualty Value of such Item, determined as of such Basic Rent Date, together with the full payment of Rent and any other amounts then due with respect to such Item of Equipment. In the event the Lessee determines that a damaged Item can be repaired, the Lessee shall continue to make all payments of Rent due with respect to such Item and shall cause such Item to be repaired or return such Item to the manufacturer for repair or replacement, within the Repair Period and in the event an Item is returned to the manufacturer or seller and replaced within six (6) months, the Lessee shall take such action as may be required to protect the Lessor's title to the replacement and perfect, protect and preserve the interests of the Lessor and any

security interests created by the Lessor therein, provided, that if the Lessee shall fail to repair such Item within the Repair Period or replace any such returned Item within six (6) months, the Lessee shall, on the Basic Rent Date next following the end of the Repair Period or time limit for replacement, pay to the Lessor the Casualty Value of such Item, determined as of such Basic Rent Date, together with the full payment of Rent and any other amounts then due with respect to such Item of Equipment. If such time is after the Expiration Date the Casualty Value shall be paid at the end of the Repair Period or time limit for replacement and the Lessee shall pay the Lessor interest at the Overdue Rate on an amount equal to the Casualty Value, as of the Expiration Date, from the Expiration Date to the date the Casualty Value is paid. If the Item to be repaired is repaired or an Item to be replaced is replaced within the time period allowed and is returned to the Lessor after the Expiration Date therefor, at the time of such return the Lessee shall pay the Lessor interest at the Overdue Rate on an amount equal to the Fair Market Value of such Item from the Expiration Date of the Item to the Date of its return to the Lessor. Upon making such Casualty Value payment and the full payment of Rent and any other amounts then due with respect to such Item of Equipment, the Lessee's obligation to pay further Rent for such Item shall cease. Except in the case of return to the manufacturer or seller, the Lessor shall be entitled to recover possession of such Item, unless possession of such Item is required to be delivered to an insurance carrier (other than the Lessee) in order to settle an insurance

claim arising out of the Event of Loss. Except as provided in Subsection (d) hereof, the Lessor shall be entitled to retain any salvage value realized other than amounts to which an insurance carrier is subrogated. The Lessor shall be under no duty to the Lessee to pursue any claim relating to the Event of Loss or against any governmental authority, but the Lessee may at its own cost and expense pursue the same on behalf of the Lessor in such manner as may be reasonably satisfactory to the Lessor. Any replacement Item provided by the manufacturer or seller in exchange for the original Item in accordance with the provisions of this Section 11(c) shall be in as good operating condition as, and shall have a value and utility at least equal to, the original Item replaced, assuming the Item replaced was in the condition and state of repair required to be maintained by the terms hereof.

(d) Following making of the Casualty Value payment and the full payment of Rent and any other amounts then due with respect to an Item of Equipment in accordance with the provisions of Section 11(c), the Lessee shall, as agent for the Lessor, dispose of such Item as soon as it is able to do so for the best price obtainable. Any such disposition shall be on an "AS-IS", "WHERE-IS" basis without representation or warranty, express or implied. Regardless of whether an Item suffering an Event of Loss shall be disposed of finally by a sale, surrender to an insurance carrier, as salvage or abandonment, the Lessor and the Lessee agree that whatever proceeds, including without limitation proceeds from insurance, from a manufacturer or supplier and

claims against third parties, which may be realized relating to the Event of Loss, provided the Lessee has paid the Lessor the amounts it is required to pay under this Section and no Event of Default has occurred and is continuing under this Lease, shall be paid to and retained by the Lessee up to the sum of (i) Casualty Value of such Item or the amount payable to the Lessee as the lessor under any Sublease of the Item, whichever is greater, (ii) the Lessee's reasonable costs and expenses of disposition or obtaining such proceeds and (iii) the amount shown in parenthesis on Exhibit A, if any, applicable to the relevant Basic Rent Date with respect to such Item, and the excess, if any, shall be paid to the Lessor. As to each Item of Equipment modified and each replacement Item installed by the manufacturer or seller pursuant to any warranty or patent indemnity provisions of any Purchase Contracts, the Lessor and the Lessee agree that such modified Item or replacement Item shall be delivered to the Lessee and shall, without any further act of the Lessor or the Lessee, be considered an Item for all purposes of this Lease.

(e) The Lessee shall bear the risk of loss and shall not be released from its obligations hereunder in the event of any damage or Event of Loss to any Item of Equipment after delivery to and acceptance by the Lessee hereunder.

(f) In the case of a Requisition of Use of any Item of Equipment for a stated period which does not exceed the remaining term of this Lease of such Item, such Requisition of Use shall not terminate this Lease with respect to such Item, and each and every obligation of the Lessee with respect thereto shall remain

in full force and effect. So long as no Event of Default shall have occurred and be continuing under this Lease, the Lessee shall be entitled to all sums received by reason of any such Requisition for Use.

(g) Unless an Event of Default or other event which, with the lapse of time or the giving of notice, or both, would constitute an Event of Default shall have occurred and be continuing hereunder, the Lessee shall be entitled, at its option, upon at least 90 days' prior written notice to the Lessor and any assignee, to terminate this Lease as to all remaining Items of ~~Type A Equipment, Type B Equipment or Type C Equipment, or any combination of all or any of these Types,~~ on the due date of the fourteenth (14th) installment of Basic Rent or on the due date of any installment of Basic Rent thereafter if the Lessee shall have made a good faith determination that all ~~(but not less than all)~~ ~~of the~~ Items of ~~such Type or Types~~ have become obsolete for use by the Lessee in its business or surplus to its needs, which notice shall specify in detail the basis for such determination and that in making such determination the Lessee did not consider alternative rental or financing rates and shall be signed by the President or a Vice President of the Lessee; provided, however, that such termination shall become effective only on a Basic Rent Date (hereinafter in this Subsection (g) called the Termination Date); provided, further, that such termination shall not take effect unless the Lessee shall have fully complied with the succeeding paragraphs of this Subsection (g).

During the period from the giving of such notice to the Termination Date, the Lessee, as agent for the Lessor, shall use its best efforts to obtain bids for the purchase of all the Items of Equipment ~~of the Type or Types~~ being terminated on an "as-is", "where-is" basis, and the Lessee shall certify to the Lessor in writing the amount of each bid received and the name and address of the person (who shall not be the Lessee or any person, firm or corporation affiliated with the Lessee) submitting such bid. An "affiliate" of the Lessee shall mean any person who possesses, directly or indirectly, the right to vote at least 10% of the voting securities of the Lessee, and any person who, directly or indirectly, controls or is controlled by or is under common control with the Lessee and "control" (including "controlled by" and "under common control with"), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or control the direction of the management and policies of such person, whether through the ownership of voting securities, by contract or otherwise. On the Termination Date, the Lessor shall, without recourse or warranty, sell such Items of Equipment for cash to whomsoever shall have submitted the highest bid therefor prior to the Termination Date, and thereupon the Lessee shall cause such Items of Equipment to be delivered to the Lessor (or directly to the purchaser thereof if so directed by the Lessor). After any sale of such Items of Equipment pursuant to this Section 11, the Lessee will not lease or otherwise use such Items and will not permit or suffer the leasing or other use of such Items by any person affiliated with the Lessee. If

the sale of such Items of Equipment shall not occur on the Termination Date, the Lessee shall not cause such delivery of the Items of Equipment to the Lessor; and this Lease shall continue in full force and effect. The Lessor shall be under no duty to (but may) solicit bids, inquire into the efforts of the Lessee to obtain bids or otherwise to take any action in connection with any such sale.

The total sales price realized at such sale shall be paid to the Lessor and, in addition, on the date of such sale, the Lessee shall pay to the Lessor (i) the excess, if any, of the Termination Value of the Items of Equipment computed as of the Termination Date over the net sales price of such Items after deducting from such sale price any reasonable costs and expenses incurred by the Lessor in connection with such sale and (ii) the full payment of Rent and any other amounts then due with respect to such Items of Equipment. If the Lessee has paid to the Lessor all amounts required to be paid under this Lease on the Termination Date, then the Lessor shall pay or refund to the Lessee the amount shown in parentheses on Exhibit B, if any, applicable to the relevant Termination Date with respect to such Items of Equipment plus the amount of the Lessee's expenses incurred in connection with such sale; provided, however, that the Lessor's obligation to make such payment or refund to the Lessee shall be limited to an amount equal to the excess of (i) the net sales price realized and paid to the Lessor over (ii) the Termination Value of the Items of Equipment computed as of the Termination

Date plus any reasonable costs and expenses incurred by the Lessor, in connection with such sale.

Notwithstanding the foregoing, the Lessor may at any time before such sale as of the Termination Date which would have been applicable but for such election elect to retain the Items of Equipment, in which case the Lessor shall pay (i) to the Lender an amount sufficient to prepay all principal and interest (if any) due with respect to the Notes or (ii) to the Lessee, the amount shown in parenthesis on Exhibit B opposite such Termination Date, if any, or the Fair Market Value of such Items, whichever is less, and the Lessee shall not be obligated to pay the Termination Value thereof to the Lessor.

SECTION 12. Insurance

The Lessee will at all times on and after the Closing Date, at its own expense, keep or cause to be kept such Item insured by a reputable insurance company or companies, satisfactory to the Lessor, in amounts, against "all risks" and with deductibles acceptable to the Lessor. Any such insurance may be carried under blanket policies so long as such policy otherwise complies with the provisions of this Section 12. All such insurance and deductibles thereunder shall be satisfactory in form and content to the Lessor and the Lender and shall cover the interest of the Lessor and the Lender in the Items, as their interests may appear, and shall protect the Lessor and the Lender in respect of "all risks" relating to Equipment, its ownership and use. Such insurance may provide that losses of less than \$3,000 for each

Item or \$50,000 in the aggregate for any one occurrence shall be adjusted with the Lessee. All liability policies shall include the Lessor and the Lender as additional insureds. All policies required hereby covering loss or damage to any Item shall include the Lessor as an additional insured and the Lender as loss payee and shall provide that any payment thereunder for any loss or damage shall (except as provided below) be made to the Lender and the Lessor, as their interests may appear, payment to the Lender to be made under a standard loss payable clause satisfactory to the Lessor and the Lender and shall provide that the insurer thereunder waives all rights of subrogation against the Lessor and the Lender, and that such insurance as to the interests of the Lessor and the Lender therein shall not be invalidated by breach of any representation, declaration or condition or any act or neglect of the Lessor, the Lessee or the Lender or by any foreclosure or other remedial proceedings or notices thereof relating to the Items or any Items or any interest therein nor by any change in the title or ownership of the Item or any interest therein or with respect thereto, or by the use or operation of the Items for purposes more hazardous or in a manner more hazardous than is permitted by such policy. No such policy shall contain a provision relieving the insurer thereunder of liability for any loss by reason of the existence of other policies of insurance covering the Items against the risks involved, whether collectible or not. If no Event of Default or other event which, with lapse of time or the giving of notice, or both, would constitute an Event of Default has occurred and is continuing here-

under, all proceeds of insurance received by the Lessor and the Lender with respect to any Items of Equipment not suffering an Event of Loss shall be paid to the Lessee upon proof satisfactory to the Lessor and the Lender that any damage to any Item with respect to which such proceeds were paid has been fully repaired and the Item has been restored to the condition required hereunder. Any such proceeds of insurance received by the Lessor and the Lender with respect to an Event of Loss shall be credited toward the payment required by this Lease with respect to an Event of Loss. The Lessee shall upon request of any such party, allow the Lender and the Lessor an opportunity to read and review the insurance policies required hereunder and shall furnish each of such parties certificates or other satisfactory evidence of maintenance of the insurance required hereunder and with respect to any renewal policy or policies shall furnish certificates evidencing such renewal not less than thirty (30) days prior to the expiration date of the original policy or renewal policies. All such policies shall provide that the same shall not be cancelled or materially altered without at least thirty (30) days prior written notice to each insured named therein.

The certificates or other evidence of insurance presented on the Closing Date and approved by the Lessor and Lender, as evidenced by the Lessor's purchase of the Equipment on such date and the Lenders making of the loan, may specify policy limits, deductible amounts and policy provisions less favorable than the insurance actually carried by the Lessee. The policy limits, deductible amounts and policy provisions stated in the

certificates or other evidence of insurance delivered and approved by the Lessor and the Lender on the Closing Date, shall establish for the term of this Lease, the level of insurance coverage required by the terms of this Section.

The Lessee and the Lessor agree that, if according to any generally accepted industry standard for owners and lessors of railroad rolling stock similar to the Equipment, broader insurance coverage has become appropriate, the insurance coverage in this Lease will be modified to conform to this standard.

SECTION 13. Indemnification

Except as otherwise provided herein, the Lessee agrees to assume liability for, and does hereby agree to indemnify, protect, save and keep harmless the Lessor and its agents, employees, shareholders, officers and directors from and against any and all liabilities, obligations, losses, damages, penalties, claims (including, without limitation, claims involving strict or absolute liability), actions, suits, costs, expenses and disbursements (including, without limitation, legal fees and expenses) of any kind and nature whatsoever (Claims) which may be imposed on, incurred or asserted against the Lessor or such persons whether or not the Lessor, or such persons shall also be indemnified as to any such Claim by any other persons, in any way relating to or arising out of this Lease or any document contemplated hereby or the performance or enforcement of any of the terms hereof or thereof, or in any way relating to or arising solely out of the Equipment, including without limitation, the

manufacture, purchase, acceptance, rejection, ownership, delivery, lease, sublease, possession, use, operation, maintenance, condition, registration, sale, return, storage or disposition of any Item of Equipment or any accident in connection therewith (including, without limitation, latent and other defects, whether or not discoverable and any Claim for patent, trademark or copy-right infringement); provided, however, that the Lessee, shall not be required to indemnify the Lessor or such persons with respect to (a) any Claim in respect of any Item of Equipment arising solely from acts or events which occur after possession of such Item of Equipment has been redelivered to the Lessor and the ninety (90) day free storage period has expired or after this Lease has been terminated pursuant to Section 11 hereof as to Items in respect of which the Claim arises, or (b) any Claim of such indemnified party resulting from the willful misconduct or gross negligence of such party or default by such party under this Lease, the Participation Agreement, the Security Agreement or the Notes. To the extent that the Lessor, or such persons in fact receives indemnification payments from the Lessee under the indemnification provisions of this Section 13, the Lessee shall be subrogated, to the extent of such indemnity paid, to the Lessor's rights with respect to the transaction or event requiring or giving rise to such indemnity. The Lessee agrees that the Lessor shall not be liable to the Lessee for any Claim caused directly or indirectly by the inadequacy of any Item of Equipment for any purpose or any deficiency or defect therein or the use or maintenance thereof or any repairs, servicing or adjustments

thereto, all of which shall be the risk and responsibility of the Lessee. The rights and indemnities of the Lessee hereunder are expressly made for the benefit of, and shall be enforceable by, the Lessor (and any successor Lessor) notwithstanding the fact that the Lessor is either no longer a party to this Lease, or was not a party to this Lease at its outset. Any party indemnified hereby shall give the party obligated to defend or indemnify it, prompt written notice of any claim or occurrence (of which it has knowledge) which may give rise to any obligations under this Section but the giving of such notice shall not be a condition to the Lessee's obligations under this Section.

SECTION 14. Assignment by Lessee, Subleasing, Assignment of Subleases

(a) Assignment by Lessee. Without the prior written consent of the Lessor, the Lessee shall not assign this Lease in whole or in part or create, incur or allow any lien, encumbrance or claim to exist with respect to the Lessee's leasehold interest hereunder.

(b) Subleasing. Provided no Event of Default has occurred and is continuing hereunder ~~the Lessee is permitted to sublease the Type A Equipment pursuant to the CPC Sublease and~~ the Lessee shall have the right without the prior written consent of the Lessor to sublease or rent the Equipment or any Item to any other person, firm or corporation in the ordinary course of the Lessee's business. Under no circumstances shall any such sublease (a) affect the obligations of the Lessee to the Lessor

hereunder, which shall be and remain those of a principal and not a guarantor or (b) exceed the term of this Lease for the Item subleased (unless the Lessee shall have given notice that its option to renew this Lease for a period exceeding the term of such sublease) or contain provisions inconsistent with this Lease and each sublease shall be subject and subordinate to this Lease in all respects. No sublease, other relinquishment of the possession of any of the Equipment, or assignment by the Lessee of any of its rights hereunder done with the written consent of the Lessor shall in any way discharge or diminish any of the Lessee's obligations to the Lessor hereunder. Each sublease shall prohibit use of the Items subject thereto outside the continental United States without the express written consent of the Lessee; and the Lessee will require as a condition of such consent that the user certify in a manner satisfactory to the Lessee the extent of the usage outside the continental United States.

(c) Assignment of Subleases. As security for the payment of Rent and all other amounts due hereunder and for the payment and performance of the Lessee's obligations hereunder, the Lessee hereby assigns, transfers and sets over unto the Lessor, for security purposes, all of its right, title, interest, powers, privileges and other benefits in, to and under, and hereby grants to the Lessor a security interest in ~~the CPC Sublease~~ and all other presently existing or after-acquired subleases in which the Lessee is the sublessor to the extent the subleases relate to Items of Equipment (the Subleases). The Lessee shall stamp or otherwise conspicuously mark all Subleases with a term exceeding

one (1) year with the following legend: THIS SUBLEASE IS SUBJECT TO AN ASSIGNMENT AND THE RIGHTS OF THE PARTIES HERETO ARE SUBORDINATE TO THE RIGHTS OF THE ASSIGNEE UNDER A LEASE ON FILE WITH THE INTERSTATE COMMERCE COMMISSION.

The Lessee hereby irrevocably appoints the Lessor as the agent and attorney-in-fact of the Lessee, upon the occurrence and during the continuation of an Event of Default, with full power and authority in the name of the Lessee, the Lessor or either of them to demand, sue for, enforce, collect and receive and receipt for, the Subleases (to the extent they relate to Items), any proceeds thereof or the Items and to apply the same to the Lessee's obligations under this Lease. At any time during the continuance of an Event of Default, the Lessee shall upon the written request of the Lessor, at the sole expense of the Lessee, notify the sublessees and any other party obligated to make payments in respect of the Subleases (to the extent they relate to Items) to make such payments directly to the Lessor.

This assignment is executed only as security for the obligations of the Lessee under this Lease and, therefore, the execution and delivery of this assignment shall not subject the Lessor to, transfer to the Lessor or in any way affect or modify, the liability of the Lessee under the Subleases, it being understood and agreed that notwithstanding this assignment or any subsequent assignment, all obligations of the Lessee to the sublessees shall be enforceable by the sublessees, their successors and assigns only against the Lessee or persons other than the Lessor.

Whenever any of the Subleases cover equipment other than the Items and the amount of any payment due to the Lessee under such Subleases as rental, hourly time charges, mileage charges or other rental revenues is calculated on an aggregate basis for all equipment leased thereunder in such a manner the amounts payable for the Items cannot readily be ascertained, an amount equal to the Assigned Fraction (as hereinafter defined) of each such payment shall be deemed to be payable with respect to the Items. For the purpose hereof, Assigned Fraction shall mean a fraction, the numerator of which is the number of Items leased under such Sublease and the denominator of which is the aggregate number of items (including such Items) at the time leased under such Sublease.

Provided that no Event of Default or other event which with the giving of notice or passage of time or both would constitute an Event of Default shall have occurred and be continuing (i) the Lessee shall have unrestricted discretion as the owner of the Subleases and as a contracting party thereunder to cancel, extend or renegotiate the same and manage the exercise of its legal rights and options thereunder or in connection therewith as if the Lessor had no interest in the Subleases and to (ii) receive and retain all amounts payable under or in connection with the Subleases or due to the enforcement thereof.

No Sublease that is for a term of three years or more shall be effective until the Lessee shall have delivered to the Lessor (i) a duly executed original counterpart thereof or true copy thereof which shall expressly provide that it is subordinate

to this Lease and that the sublessee's rights thereunder are subject to all the terms and conditions hereof; (ii) an instrument pursuant to which the Lessee assigns to the Lessor and grants it a security interest in such Sublease upon terms comparable to those set forth in the first five paragraphs of this Subsection; (iii) an acknowledgement copy of a financing statement on form UCC-1 filed in the office of the Secretary of State of the State of California, or such other office as may then be appropriate, with respect to the assignment of such Sublease, indicating the Lessee, as debtor, and the Lessor, as secured party, duly stamped by a filing office to indicate the date and time of filing and the filing number; (iv) evidence that such Sublease and the assignment thereof have been filed with Interstate Commerce Commission; and (v) an opinion of counsel with respect to such filings satisfactory to the Lessor, provided that if the Lessee shall provide the Lessor, at the Lessee's expense, with an opinion of counsel, satisfactory to the Lessor, to the effect that the Lessor's security interest in all Subleases is perfected and protected by the filings and recordings accomplished on the Closing Date and the instrument of assignment referred to in clause (ii) above, and agrees to furnish the Lessor at least annually a summary of all Subleases entered into since the last report and copies of all assignments referred to in clause (ii) above not previously furnished to the Lessor with proof all such assignments had been properly filed with the Interstate Commerce Commission, the documents and opinions referred to in clauses (i), (iii) and (v) above shall not be required.

SECTION 15. Tax Indemnification

(a) Tax Assumptions. The following are tax related assumptions which the Lessor has made in initially calculating its book earnings and nominal before-tax rate of return in this transaction (the Tax Assumptions):

(i) This Lease is a true lease of each Item of Equipment between the Lessor, as purchaser, owner, lessor and original user, and the Lessee, as lessee.

(ii) The entire Owner's Cost of the Equipment will be attributable to "new section 38 property" within the meaning of Section 48(b) of the Code.

(iii) The "original use" of each Item of Equipment will "commence", within the meaning of Section 48(b)(2) and 167(c)(2) of the Code and the corresponding provisions of applicable state law, with the Lessor on or after the Closing Date.

(iv) Each Item of Equipment will be deemed to be "placed in service by" the Lessor, within the meaning of Sections 46 through 50 of the Code on the Closing Date.

(v) The basis for each Item of Equipment on the Closing Date under Section 46(c)(1)(A), for purposes of computing the investment credit, and Section 167(g) and the corresponding provisions of applicable state law, for purposes of computing depreciation deductions, is an amount equal to the Owner's Cost thereof.

(vi) A credit against the tax imposed by Chapter 1 of the Code is allowable for calendar year 1981 with respect to

each Item of Equipment in an amount equal to 10% of the basis thereof pursuant to Section 38 and 46 through 50 of the Code and the Regulations promulgated thereunder (Regulations).

(vii) Depreciation deductions are allowable with respect to each Item of Equipment pursuant to Section 167 of the Code and the corresponding provisions of applicable state law, and may be computed initially pursuant to the declining balance method of depreciation, using a rate equal to 200% of the straight line rate, and thereafter the method of depreciation may at any time be changed from such declining balance method to the sum of the years-digits method of depreciation, pursuant to Section 1.167(a)-11(c)(1)(iii) of the Regulations and the corresponding provisions of applicable state law, without the consent of the applicable taxing authority.

(viii) The salvage value of each Item of Equipment is an amount equal to 0% of the Owner's Cost thereof after making the reduction permitted by Section 167(f) of the Code and the corresponding provisions of applicable state law.

(ix) Each Item of Equipment may be depreciated over an asset depreciation period of 12 years under the asset depreciation range system of Section 167(m) of the Code and Section 1.167(a)-11 of the Regulations and a depreciation period of 15 years for applicable state income and franchise tax purposes both of which periods commence on July 1, 1981.

(x) The Lessor will be entitled to deductions with respect to interest paid or accrued on the indebtedness in-

curring or to be incurred by the Lessor in financing or refinancing its purchase of the Equipment.

(xi) All amounts included in the gross income of the Lessor with respect to the Items of Equipment and all deductions allowable to the Lessor with respect to the Items will be treated as derived from or allocable to sources within the United States.

In connection with any adjustments pursuant to Section 3(f)(ii), changes or additions to the Tax Assumptions may be agreed to between the Lessor and the Lessee for purposes of this Section, Section 3(f)(i) and Section 12 of the Participation Agreement. References to the terms, Tax Assumptions, Basic Rent, Casualty Value and Termination Value as used in this Section mean such terms as changed or adjusted pursuant to Section 3(f) and Section 12 of the Participation Agreement.

(b) Indemnity. If (i) as a result of any Cause of Tax Loss (as defined in Section 15(c) below) the Lessor shall not be entitled to all of the tax benefits that flow from the Tax Assumptions or any of those benefits shall at any time be recaptured, disallowed or lost, or (ii) for any reason whatsoever the Lessor shall be required to include in gross income amounts with respect to the transactions contemplated by this Lease, other than (1) fees, commissions or other payments the Lessor may receive for services to others, (2) Basic Rent at the time of actual receipt by the Lessor, (3) any indemnity payment under the Lease at the time of actual receipt by the Lessor to the extent indemnity to the Lessor is included in or paid separately to the

Lessor in respect of the tax consequences of such payment, (4) payments of Casualty Value and the excess of any net insurance proceeds, condemnation payments, damages or other amounts over Casualty Value under Section 11, payments under Section 18 determined with reference to Casualty Value, and payments of Termination Value under Section 11 and the excess of any proceeds of sale over Termination Value under Section 11, or the value of or proceeds from any Item of Equipment returned to the Lessor pursuant thereto and (5) Fair Market Value or Fair Market Rental Value or any other amounts or proceeds from the sale, leasing, use or other disposition of any Item of Equipment from the Lessee or any other person, after the Expiration Date even if this Lease should be renewed pursuant to Section 18 (any such failure of entitlement, recapture or inclusion in gross income being herein called a Tax Loss), then the Lessee shall indemnify the Lessor for the amount of the Tax Loss in accordance with this Section 15.

(c) Causes of Tax Loss. Cause of Tax Loss for the purposes of Section 15(b) above means any one or more of the following causes that shall result in a Tax Loss:

(i) Any Item of Equipment not constituting "new section 38 property" within the meaning of Section 48(b) of the Code on the Closing Date.

(ii) Any Item of Equipment having been used, available for use or otherwise placed in service on or before the Closing Date so as to preclude the "original use" of such Item, within the meaning of Section 48(b) (2) and 167(c) (2) of the Code, from commencing with the Lessor.

(iii) Any Item of Equipment ceasing at any time during the Term to be "section 38 property" within the meaning of Section 48(a) of the Code.

(iv) On the Closing Date, the basis of any Item of Equipment under Section 46(c)(1)(A) of the Code, for the purpose of computing the investment credit, and Section 167(g) of the Code and the corresponding provision of applicable state law, for the purpose of computing depreciation deductions, being an amount less than the Owner's Cost thereof.

(v) Any breach by the Lessee or the Guarantor of any of the representations, warranties or agreements made by them in this Lease, the Participation Agreement or the Purchase Documents.

(vi) The Lessor shall not be entitled for any reason whatsoever to treat all amounts included in its gross income with respect to the Participation Agreement, the Lease and the Security Agreement and the transactions contemplated thereby and all deductions allowable to the Lessor with respect thereto as derived from or allocable to sources within the United States.

(vii) Any replacement of an Item of Equipment during the Repair Period or following an Event of Loss.

(viii) Any act or failure to act on the part of the Lessee whether or not permitted or required by this Lease or the Participation Agreement, or consented to by the Lessor but not including the failure to sublease an Item.

Notwithstanding the foregoing, none of the following causes shall be a Cause of Tax Loss or the cause of a Tax Loss for which the Lessee shall be required to indemnify the Lessor to the extent that a Tax Loss is caused solely by one or more of the following causes:

(1) The failure of the Lessor to have sufficient tax liability against which to apply investment tax credit or sufficient gross income to benefit from depreciation and interest deductions.

(2) The failure of the Lessor to claim in a timely and proper manner any permissible deductions, credits and treatment of income and deductions referred to in the Tax Assumptions, or the Lessor including in its income amounts in connection with the Lease which are not properly includable, unless in the opinion of counsel for the Lessor there is no reasonable basis for such claim or treatment or exclusion of such amounts from the Lessor's income or unless the matter in question shall have previously been decided pursuant to the contest provisions of Section 15(e) below.

(3) A voluntary or involuntary transfer or disposition by the Lessor of its interest in any Item of Equipment or part thereof or any interest in this Lease (other than any disposition (x) resulting from the exercise by the Lessee, or any person claiming any right through the Lessee, of the Lessee's rights under this Lease or (y) occurring by reason of an Event of Default).

(4) A transfer by the Lessor of its interest in the Equipment in a transaction in which Casualty or Termination Value shall be payable (but only to the extent that payment of Casualty or Termination Value compensates the Lessor for the Tax Loss).

(5) Any change in the Code or Regulations or any state or local tax laws.

(6) Any event occurring after the Expiration of the term of this Lease and any renewals thereof and not relating to any period during such term.

(d) Amount of Indemnity.

(i) Payments by Lessee. In the case of a Tax Loss, the Lessee shall pay to the Lessor such amount (or, with the Lessor's consent, such amounts from time to time over the remaining term of this Lease) as shall be necessary, after deduction of all taxes required to be paid by the Lessor in respect of the receipt or accrual of such amount, to permit the Lessor to preserve both the net after-tax yield and net after-tax earnings that the Lessor would have realized had the Tax Loss not occurred (but considering only the fact that the Tax Loss has occurred).

(ii) Payments by Lessor. If the event which results in a Tax Loss in any year for which the Lessor is indemnified by the Lessee as provided above has the effect of reducing the tax liability of the Lessor, the Lessor shall pay to the Lessee the sum of (A) the amount by which the Lessor's tax liability has been so reduced and (B) any reduction in the Lessor's tax liability attributable to the deduction of the

amount described in this sentence; provided, however, that the total of such payments by the Lessor shall not exceed the total of indemnity payments made by the Lessee in respect of such indemnity and no such amount shall be payable to Lessee at any time when an Event of Default (or any event which with the lapse of time or the giving of notice or both would become an Event of Default) has occurred and is continuing.

(iii) Time of Payment. Any amount payable to the Lessor pursuant to this Section 15 shall be paid not later than 10 days after receipt of a written demand therefor from the Lessor (but not prior to the earlier of (A) payment by the Lessor of the additional federal, state or local income or franchise tax (including payments of estimated tax), as the case may be, which shall become due as a result of such Tax Loss, or (B) the date the Lessor shall suffer a reduction in the amount of any refund of federal, state or local income or franchise tax which the Lessor would have been entitled to receive but for such Tax Loss), accompanied by a description of such Tax Loss and a computation of the amount so payable, and an amount payable by the Lessor to the Lessee shall be made when the Lessor realizes a tax benefit or receives a refund.

(e) Contest. If a claim shall be made by the Internal Revenue Service which, if successful, would result in a Tax Loss under circumstances which would require the Lessee to indemnify the Lessor, the Lessor shall promptly notify the Lessee. If within 30 days of such notice the Lessee requests the

Lessor in writing, and so long as such proceedings do not involve any danger of sale, forfeiture or loss of any Items of Equipment, or any interest therein, and upon the receipt by the Lessor of (i) an opinion of independent tax counsel obtained at the Lessee's expense, reasonably satisfactory to the Lessor, to the effect that a meritorious defense exists as to such claim and (ii) indemnity reasonably satisfactory to the Lessor, and at the expense of the Lessee (including, without limitation, all costs, expenses, losses, legal and accountants' fees and disbursements, penalties and interest), then the Lessor shall in good faith contest (after consultation with the Lessee) in the name of the Lessor (or, in the sole discretion of the Lessor, in the name of the Lessee), the validity, applicability and amount of the taxes, fees or other charges involved in the Tax Loss by such proceedings as the Lessor, after considering in good faith such request as the Lessee shall make concerning the most appropriate mode of contest, as the Lessor shall in its sole discretion determine appropriate, including (x) resisting payment thereof, (y) not paying the same except under protest, if protest is necessary and proper and (z) if payment be made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings. If the Lessee should object to a proposed compromise of any such contest and if the Lessor nevertheless accepts such compromise, such acceptance shall operate as a waiver of the Lessor's right of indemnity against the Lessee with respect to the specific tax, fee or other charge being contested, unless the Lessor shall furnish an opinion of independent tax

counsel, reasonably satisfactory to the Lessee, stating that the proposed compromise fairly reflects the litigation potential of such contest. If the Lessor shall obtain a refund of all or any part of such tax, fee or other charge paid by the Lessee, the Lessor shall pay the Lessee an amount which, after taking into consideration the tax consequences under the laws of any federal, state or local or other taxing authority resulting from the receipt by the Lessor of such a refund and the payment hereunder to the Lessee, is sufficient to place the Lessor in the same position as it would have been had no refund been received by the Lessor and the Lessor had not made any payment hereunder; provided, that such amount shall not be payable before such time as Lessee shall have made payment of all indemnities then due under this Section 15. If in addition to such refund the Lessor shall receive an amount representing interest on the amount of such refund, the Lessee shall be paid that proportion of such interest which is fairly attributable to taxes, fees or other charges paid by the Lessee prior to the receipt of such refund.

(f) No inconsistent Lessee Actions. The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with this Section 15 and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee agrees to keep and make available for inspection and copying by the Lessor such

records as will enable the Lessor to determine that it is entitled to the full benefit of the Tax Assumptions.

SECTION 16. Lease Extension, Right of First Purchase

(a) Provided that this Lease has not been terminated and provided that no Event of Default or occurrence which would constitute an Event of Default with the lapse of time or the giving of notice or both, has occurred and is continuing hereunder, the Lessee shall have the option, upon 180 days' prior written notice to the Lessor to extend the term of this Lease with respect to all (but not less than all) Items then subject to this Lease for a maximum of two renewal terms, each renewal term being for a period of three years for a rental equal to the Fair Market Rental Value thereof assuming the Equipment to have been maintained to the standard required under this Lease.

(b) Not less than one-hundred and eighty (180) days prior to the Expiration Date or end of the last renewal period, the Lessee may indicate, by written notice to the Lessor, the Lessee's interest in exercising the Lessee's lease extension, which notice shall set forth the Lessee's estimate of the Fair Market Rental Value and the Fair Market Value of the relevant Items, assuming the Equipment to have been maintained to the standard required under this Lease and renewal term being exercised, as of such date. If, on or before a date one-hundred and fifty (150) days prior to the Expiration Date or end of last renewal period, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental Value and the Fair

Market Value for the requested renewal, such amounts shall be determined in accordance with the procedure for Appraisal. After a determination has been made in accordance with the procedure described above, the Lessee may exercise its option to extend the term of this Lease by delivering written notice of such exercise to the Lessor not less than one-hundred and twenty (120) days prior to the Expiration Date or end of the last renewal period. The Lessee shall have no right of early termination comparable to that provided in Section 11 hereof during any extended period of this Lease, and the Casualty Value applicable to any Item shall be an amount equal to the Fair Market Value of the Item plus the Rent payment due on the next payment date of such extended period.

(c) For a period of one year after the expiration of the term of this Lease and all renewal terms properly elected by the Lessee, the Lessor shall not sell or purport to sell any Item of Equipment to any person, firm or corporation other than the Lessee, unless during such period (which shall include the last 60 days of the term or last renewal term, if the Lessee have not elected to renew this Lease) the Lessor shall first have delivered to the Lessee a written offer to sell such Item to the Lessee at its Fair Market Value as of the date of the offer. The Lessee may accept such offer by giving to the Lessor, within 60 days after receipt of the offer, written notice of acceptance, but the Lessee may not accept such offer if an Event of Default (or an occurrence which would constitute an Event of Default with the lapse of time of giving of notice or both) shall have occurred and be continuing until the Event of Default or occurrence

has been cured. The 60-day period for acceptance shall not be extended by reason of any such Event of Default or occurrence or any efforts to cure it. The Lessor and the Lessee shall use their best efforts to agree on the Fair Market Value of the Item promptly after the offer is made; but if agreement is not reached within 20 days of the date of the offer, the parties agree to institute the procedure for Appraisal. If such offer is accepted, the Lessor shall sell and the Lessee shall purchase such Item upon the date such offer is accepted. Upon payment by the Lessee of the purchase price of the Item, the Lessor shall execute and deliver to or at the direction of the Lessee a bill of sale for such Item on an "as-is, where-is" basis and without any representation or warranty by the Lessor, except for a warranty that each Item is free and clear of all claims, liens, security interests and other encumbrances in favor of the Lessor or any person claiming through or under the Lessor. The Lessee shall pay or cause to be paid all sales and use taxes payable in connection with such sale and all unpaid property taxes accrued with respect to such Item for which the Lessee is responsible under the Lease. If the Lessor's offer is not accepted by the Lessee within such 60-day period, the Lessor may sell such Items of Equipment to any person at any time thereafter, free of all claims of the Lessee under this Lease.

SECTION 17. Events of Default

The term Event of Default, wherever used herein, shall mean any of the following events under the Lease listed below

(whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or come about or be affected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court of any order, rule or regulation of any administrative or governmental body).

(a) The Lessee or any assignee shall fail to make any payment of Rent after the same shall become due and such failure shall continue for five (5) days after written notice thereof from the Lessor to the Lessee; or

(b) The Lessee shall fail to maintain insurance in accordance with the requirements of Section 12 hereof; or

(c) The Lessee shall fail to perform or observe any other covenant, condition, or agreement to be performed or observed by it under this Lease or any agreement, document or certificate delivered by the Lessee in connection herewith, and such failure shall continue for thirty (30) days after written notice thereof from the Lessor to the Lessee; or

(d) The Guarantor or the Lessee shall fail to perform or observe any covenant, condition, or agreement to be performed by it under the Participation Agreement or any agreement, document or certificate delivered by the Guarantor or the Lessee in connection therewith, and such failure shall continue for thirty (30) days after written notice thereof from the Lessor to the Lessee and the Guarantor; or

(e) Any representation or warranty made by the Lessee in this Lease or by the Lessee or the Guarantor in the Participation Agreement, or in any other document (including financial

statements) or certificate furnished to the Lessor in connection therewith, except the representations and warranties contained in Section 15, shall prove to have been incorrect in any material respect when any such representation or warranty was made or given; or

(f) The Lessee or the Guarantor becomes insolvent or generally is not paying its debts as such debts become due; or any of them applies for, consents to or acquiesces in the appointment of a trustee or a receiver, or a trustee or receiver for any property of any thereof; or, in the absence of such application, consent or acquiescence, a trustee or receiver is appointed for the Lessee or the Guarantor, or for a substantial part of the property of any thereof, and is not discharged within sixty (60) days; or any bankruptcy, reorganization, debt arrangement or other proceeding under any bankruptcy or insolvency law or any dissolution or liquidation proceeding is instituted by or against the Lessee or the Guarantor and, if instituted against the Lessee or the Guarantor is consented to or acquiesced in or remains for ninety (90) days undismissed; or

(g) Any obligation of the Lessee or the Guarantor for borrowed money the aggregate outstanding principal amount of which is in excess of \$250,000, or for the payment of rent under leases of real or personal property having aggregate remaining unpaid rentals in excess of \$250,000, or for the deferred purchase price of property having aggregate remaining unpaid payments in excess of \$250,000 becomes or is declared to be due and payable prior to its express maturity by reason of default by the

Lessee or the Guarantor in the performance or observation of any obligation or condition; or

(h) The Lessee shall attempt to or remove, sell, transfer, encumber, part with possession of, assign or sublet any Item of Equipment in violation of the terms of this Lease.

SECTION 18. Remedies

Upon the happening of an Event of Default, the Lessor shall (except to the extent otherwise required by law) be entitled to:

(i) Proceed by appropriate court action or actions to enforce performance by the Lessee of the applicable covenants and terms of this Lease or to recover damages for the breach thereof;

(ii) Repossess any or all Items of Equipment without prejudice to any remedy or claim hereinafter referred to;

(iii) Elect to sell any or all Items of Equipment, after giving fifteen (15) days' notice to the Lessee, at one or more public or private sales and recover from the Lessee as liquidated damages for the Lessee's default hereunder an amount equal to the amount, if any, by which (A) the sum of (i) the aggregate Casualty Value of such Items of Equipment determined as of the rent payment date next following the date such notice is given, (ii) all Rent owing hereunder to and including the rent payment date immediately following the date such notice is given, (iii) all reasonable costs and expenses incurred in searching for, taking, removing, keeping, storing, repairing, restoring, and selling such Items of Equipment, (iv) all other amounts owing by the Lessee hereunder, whether as additional Rent, indemnifica-

tion or otherwise, and (v) all costs and expenses, including (without limitation) reasonable legal fees and expenses, incurred by the Lessor as a result of the Lessee's default hereunder, exceeds (B) the amount received by the Lessor upon such public or private sales of such Items of Equipment;

(iv) Upon notice to the Lessee receive prompt payment from the Lessee of an amount equal to the aggregate Casualty Value determined as of the rent payment date next following the date such notice is given of all Items of Equipment which have not been sold by the Lessor pursuant to clause (iii) above plus, to the extent not otherwise recovered from the Lessee pursuant to said clause (iii) above, (a) any Rent and other amounts owing hereunder to and including the rent payment date immediately following the date such notice is given, (b) all reasonable costs and expenses incurred in searching for, taking, removing, keeping, storing, repairing and restoring such Items of Equipment, (c) all other amounts owing by the Lessee hereunder whether as additional Rent, indemnification or otherwise, and (d) all costs and expenses, including (without limitation) reasonable legal fees and expenses, incurred by the Lessor as a result of the Lessee's default hereunder; provided that upon receipt of payment in full of such amount, the Lessor shall transfer to the Lessee, without any representation or warranty of any kind, express or implied, whatever title to such Items of Equipment it may have, free of all liens arising by, through or under the Lessor or any of its affiliates;

(v) By notice to the Lessee, declare this Lease terminated without prejudice to the Lessor's rights in respect of obligations then accrued and remaining unsatisfied; or

(vi) Avail itself of any other remedy or remedies provided for by any statute or otherwise available at law, in equity, or in bankruptcy or insolvency proceedings.

The remedies herein set forth or referred to shall be cumulative. The references to additional Rent in clauses (iii) and (iv) of this Section 18 shall each include, without limitation, interest at the Overdue Rate, to the date of receipt by the Lessor of the amount payable under said clause, or installments of rent owing hereunder to and including the rent payment date immediately following the date on which notice is given under said clause, from the respective due dates of such installments, and interest on all other costs, expenses and losses for which the Lessor is entitled to payment under said clause from the respective dates incurred by Lessor.

In the event that on or after any date on Exhibit A after which an amount is shown in parenthesis, any or all Items of Equipment are repossessed pursuant to clause (ii) of this Section or sold pursuant to clause (ii) of this Section, the Lessee shall be entitled to the lesser of the following amounts:

(i) the amount shown in parentheses on Exhibit A with respect to such Items determined as of the rent payment date next following the date the sale is made with respect to the applicable Item or the date repossession of the applicable Item is effected.

(ii) the excess, if any, of (A) the sum of the proceeds resulting from the sale of the Items and the Fair Market Values of any unsold Items; over (B) the sum with respect to such Items which equals the total of (i) the Casualty Value of such Items of Equipment determined as of the rent payment date next following the date such notice is given, (ii) all Rent owing hereunder to and including the rent payment date immediately following the date such notice is given, (iii) all reasonable costs and expenses incurred in searching for, taking, removing, keeping, storing, repairing, restoring, and selling such Items of Equipment, (iv) all other amounts owing by the Lessee hereunder, whether as additional Rent, indemnification or otherwise, and (v) all costs and expenses, including (without limitation) reasonable legal fees and expenses, incurred by the Lessor as a result of the Lessee's default hereunder.

SECTION 19. Notices

All communications and notices provided for herein shall be in writing and shall become effective one (1) business day after deposit in the United States mail, with proper post- age for first-class mail prepaid certified or registered return receipt requested, addressed:

(a) if to the Lessor at:

~~425 California Street~~
~~San Francisco, California 94104~~

Attention: ~~Contract Administration~~

(b) if to the Lessee at:

633 Battery Street
San Francisco, California 94111

Attention: President

with a copy to the Guarantor at the same address as the Lessee,
Attention: President.

SECTION 20. Lessor's Right to Perform for Lessee.

If the Lessee shall fail to make any payment due hereunder or to perform or comply with any of its covenants and agreements contained herein, the Lessor may give notice of such failure to the Lessee and, within ten days after such notice is given, the Lessor may itself make such payment or perform or comply with such agreements or covenants except that if the Lessee's failure creates substantial risk or harm to or forfeiture of any of the Equipment, the Lessor may make such payment or perform or comply with such agreements or covenants concurrently with or at any time after the giving of such notice and the amount of the reasonable expenses of the Lessor (including attorneys' fees and expenses) incurred in connection with such payment of the performance of or compliance with such agreements or covenants as the case may be, together with interest thereon at the Overdue Rate, shall be deemed Rent, payable by the Lessee upon demand. No such payment, performance or compliance by the Lessor shall be deemed to cure any Event of Default arising out of such failure of the Lessee to pay, perform or comply.

SECTION 21. Further Assurances.

The Lessee will promptly and duly execute and deliver to the Lessor such documents and assurances and take such further action as the Lessor may from time to time reasonably request in order to carry out more effectively the intent and purpose of this Lease and to establish and protect the rights and remedies created or intended to be created in favor of Lessor hereunder, including, without limitation, if requested by the Lessor and at the expense of the Lessee, the recording or filing of counterparts hereof, or of such other documents with respect hereto, in accordance with the laws of such jurisdictions hereto, in accordance with the laws of such jurisdictions as Lessor may from time to time reasonably request and so advise Lessee in writing.

SECTION 22. Amendments and Miscellaneous

(a) The terms of this Lease shall not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by written instrument signed by the Lessor and the Lessee.

(b) This Lease, including all agreements, covenants, representations and warranties, shall be binding upon and inure to the benefit of the Lessor and its successors, assigns, agents, servants and personal representatives. The obligations and liabilities of the Lessor and the Lessee arising under this Lease shall survive the expiration or earlier termination of this Lease, until all such obligations have been met and such liabilities have been paid in full.

(c) All agreements, covenants, representations and warranties contained in this Lease or in any document or certificate delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Lease and the expiration or other termination of this Lease.

(d) Any provision of this Lease which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

(e) This Lease shall constitute an agreement of lease and nothing herein shall be construed as conveying to the Lessee any right, title or interest in or to the Equipment, except as lessee only.

(f) The single executed original of this Lease marked "Original" shall be the "Original" and all other counterparts hereof shall be marked and be "Duplicates." To the extent that this Lease constitutes chattel paper, as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction, no security interest in this Lease may be created through the transfer or possession of any counterpart other than the "Original."

other documents related thereto. Notwithstanding such dating the effective date of this Lease for all purposes is the Closing Date.

IN WITNESS WHEREOF, the parties hereto have each caused this Lease to be duly executed by their respective officers thereunto duly authorized.

LESSOR:

FIRST COMMERCIAL BANK

By

its *[Signature]*
W. J. O'Leary Financial Officer

By

its *[Signature]*
Vice Pres.

LESSEE:

UNITED STATES RAIL SERVICES,
INC.

By

its *[Signature]*
Senior Vice President

Exhibits:

Exhibit A - Casualty Values

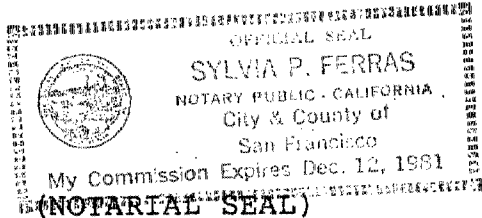
Exhibit B - Termination Values

STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO

)
)
)
SS

On this 30th day of July, 1981, before me personally appeared R. Weiner and D. B. Foreman, to me personally known, who being by me duly sworn, says that they are Vice President and Vice President of FIRST COMMERCIAL BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Sylvia P. Ferras
Notary Public

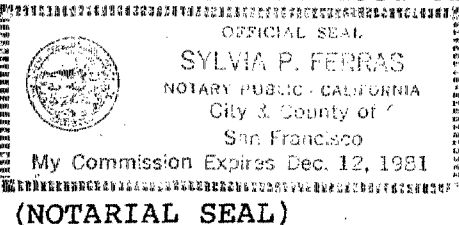
My commission expires: December 12, 1981

STATE OF SAN FRANCISCO

CITY AND COUNTY OF CALIFORNIA

)
)
)
SS

On this 30th day of July, 1981, before me personally appeared David M. Mendelsohn, to me personally known, who being by me duly sworn, says that he is Senior Vice President of UNITED STATES RAIL SERVICES, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Sylvia P. Ferras
Notary Public

My commission expires: December 12, 1981